

## Oregon Health Information Laws as contrasted with HIPAA and/or other federal protections

### Health Information generally

- ORS 40.235 and 40.240 – Nurse and Physician privilege
  - Not sure the application of these laws to PRR, as they are geared towards evidentiary issues within the confines of a legal proceeding.
- ORS 179.495 and 179.535 – Inmate Medical Accounts
  - These appear to be largely analogous to the protections contained in HIPAA, as they focus on individually identifiable information related to the provision of health care
  - Only question I have is whether ODOC considers their health care providers to be covered entities for the purposes of HIPAA, but I would assume they are, as HIPAA has specific rules for penal institutions.
- ORS 192.535, 192.537 and 192.539 – Genetic Testing
  - Unclear whether federal law has an analogue. If the genetic testing is performed by a covered entity, then HIPAA would apply at that entity, but not necessarily when it is subsequently in the hands of a public entity.
- ORS 192.553 – 192.581 General restriction on the Disclosure of medical information
  - Largely analogous to HIPAA, unclear what this provides beyond the protections of ORS 192.355(8), which prohibits the disclosure of information protected by federal law.
- ORS 432.108 – Report of live birth for child with unknown parentage
  - Not aware of any analogous federal law
- ORS 433.045 – Notice of HIV testing
  - Assuming the HIV testing provider is a covered entity, I do not see how this would not fall under HIPAA as well.
  - Could be helpful for non-covered entities such as employers, but other exceptions would be applicable to that scenario.
- ORS 682.056 – Patient contact data for ambulance patients
  - If the request is made from the ambulance provider themselves, HIPAA covered
  - Unclear about if the request is being made of OHA, more convoluted
    - Presumably shared with OHA as a health oversight activity that is permitted by 45 CFR 164.512(d), however OHA is a hybrid entity and depending on what portion of OHA receives the data, it could no longer be protected.

### Public Health and Various Health Databases

- ORS 97.977 – Organ Donor registry program
  - No clear analogous federal laws. Potentially subject to 42 CFR 121.11, but their confidentiality language is broader than the state law.
- ORS 127.678 – Physician Order for Life Sustaining Treatment
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity.
- ORS 192.355(39) – OHA prescription drug monitoring

- This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity.
- ORS 413.175 – OHA records for public assistance or medical assistance
  - Would be covered by HIPAA if this portion of OHA is a covered entity. If not, This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity.
- ORS 413.196 – Records for epidemiologic and mortality studies
  - Exempts all records in the related epidemiologic studies, except for deidentified information
  - No clear federal analogue unless the OHA department is HIPAA covered.
- ORS 414.414 – Prescription drug monitoring program
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity
- ORS 431A.055 – State Trauma advisory Board records
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity
- ORS 431A.125 – OHA's injury and violence prevention program records
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity
- ORS 431A.530 – Stroke care database at OHA
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity
- ORS 431A.865 – Prescription drug monitoring program records.
  - Seems duplicative of ORS 192.355(39)
- ORS 432.530 – Confidentiality of OHA data on brain cancer
  - This appears to be another health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by the public entity
- ORS 433.008 – Confidentiality of reportable disease investigation materials
  - No federal analogue
- ORS 433.098 – Confidential immunization registry
  - Presumably not protected in OHA's hands, and it will be a checkerboard of answers at the local public health level depending on covered entity categorization
- ORS 433.123 and 433.137 – Evidence presented during an isolation or quarantine proceeding
  - No federal analogue
- ORS 433.423 – Confidentiality for the identity of people with infectious diseases and workers exposed
  - No federal analogue

- ORS 433.443 – PHI obtained by OHA or LPHA during public health emergency
  - Presumably not protected in OHA’s hands, and it will be a checkerboard of answers at the local public health level depending on covered entity categorization
- ORS 438.310 – Infectious disease reports to OHA from laboratories
  - No federal analogue
- ORS 442.831 – Patient safety commission patient safety data
  - Limited to information that could identify a patient
  - Health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by OHA.
- ORS 444.330 – Childhood diabetes database
  - health oversight activity that would be permitted for the covered entity to share with OHA, and could no longer be protected once possessed by OHA.
- ORS 475B.882 and 475.892 – Medical Marijuana database and registry
  - No federal analogue
- ORS 634.550 – Pesticide Analytical and Response Center data
  - No federal analogue

### **Institutions and protected persons**

- ORS 125.012 – PHI disclosures involved in DHS or OHA proceedings
  - More of a court issue than a PRR issue
  - Could be potentially covered by just using a protective order, but these proceedings don’t fall under normal ORCP procedures
- ORS 125.085 – Motions after appointment of a fiduciary
  - Mostly an extension of ORS 441.407, which relates to the long term care ombudsman’s confidentiality requirements, and extends that to those materials submitted to the courts
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- ORS 192.517 – Disability Rights Oregon Confidentiality
  - Largely just explicitly placing DRO’s record confidentiality to be the same required under 42 USC 10802, but this is specific to advocacy for mental illness, no similar analogue to advocacy for individuals with disabilities
  - Open question on whether DRO would be subject to the PR laws, as they are a non-profit, but operating under a government mandate of authority
- ORS 410.535 – Long term care assessments
  - DHS performs assessments for individuals being placed in long term care
  - No federal analogue
- ORS 441.044 – Complaints about standards of care in health care facilities
  - No federal analogue
- ORS 441.407 – Long Term Care Ombudsman complaints
  - No federal analogue
- ORS 433.769 – DHS investigations into adult foster homes
  - Limits the release of any personally identifiable information on individuals involved in investigations in to adult foster homes
  - No federal analogue

## Employment and other regulatory purposes

- ORS 192.355(20) and 192.355(36) – Workers compensation records with DCBS and Claim information with SAIF
  - No federal analogue
- ORS 344.530 and 344.600 – vocational rehabilitation information
  - No federal analogue
- ORS 431A.090 – Quality assurance activities with the State Trauma Advisory Board
  - No federal analogue
- ORS 656.260 – DCBS data related to reviews of medical services to injured workers
  - No federal analogue
- ORS 656.327 and 656.260 – Reviews of workers compensation claim treatments and claim records
  - No federal analogue
- ORS 659A.133 and 659A.136 – Employer medical examination
  - No federal analogue

## Law Enforcement

- ORS 135.139 – HIV test results of a person charged with a crime
  - No federal analogue
- ORS 146.184 – Information obtained by LE for locating missing persons
  - Possibly duplicative of ORS 192.345(3)(criminal investigatory material, conditional)
  - Possibly duplicative of ORS 192.355(2)(a)(personal information)
- ORS 146.780 – Reports of injuries made to LE from medical professionals
  - No federal analogue
  - Possibly duplicative of ORS 192.345(3)(criminal investigatory material, conditional)
- ORS 181A.155 – Blood and Buccal samples
  - No federal analogue